

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
Meghan E. George (SBN 274525)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
21550 Oxnard St., Suite 780
Woodland Hills, CA 91367
Phone: 877-206-4741
Fax: 866-633-0228
tfriedman@toddlaw.com
abacon@toddlaw.com
mgeorge@toddlaw.com
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

) Case No:
)
JACKIE WINTERS, individually and)
on behalf of all others similarly situated,) **CLASS ACTION**
)
Plaintiff,) **COMPLAINT FOR VIOLATIONS**
) **OF:**
)
vs.)
)
CAPITAL ONE BANK (USA) N.A.,) 1. NEGLIGENT VIOLATIONS
) OF THE TELEPHONE
and DOES 1 through 10, inclusive, and) CONSUMER PROTECTION
each of them,) ACT [47 U.S.C. §227 *et seq.*]
) 2. WILLFUL VIOLATIONS
) OF THE TELEPHONE
Defendant.) CONSUMER PROTECTION
) ACT [47 U.S.C. §227 *et seq.*]
)
)
) **DEMAND FOR JURY TRIAL**
)
)
)
)
)

Plaintiff JACKIE WINTERS (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others
3 similarly situated seeking damages and any other available legal or equitable
4 remedies resulting from the illegal actions of CAPITAL ONE BANK (USA) N.A.
5 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on
6 Plaintiff’s home telephone in violation of the Telephone Consumer Protection Act,
7 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the National
8 Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

9 **JURISDICTION & VENUE**

10 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
11 a resident of California, seeks relief on behalf of a Class, which will result in at
12 least one class member belonging to a different state than that of Defendant, a
13 company with its principal place of business in the State of Virginia. Plaintiff also
14 seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which,
15 when aggregated among a proposed class in the thousands, exceeds the
16 \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity
17 jurisdiction and the damages threshold under the Class Action Fairness Act of 2005
18 (“CAFA”) are present, and this Court has jurisdiction.

19 3. Venue is proper in the United States District Court for the Central
20 District of California pursuant to 28 U.S.C. § 1391(b) because Defendant does
21 business within the State of California and Plaintiff resides within the County of
22 Los Angeles.

23 **PARTIES**

24 4. Plaintiff, JACKIE WINTERS (“Plaintiff”), is a natural person
25 residing in Canoga Park, California and is a “person” as defined by 47 U.S.C. § 153
26 (39).

27 5. Defendant, CAPITAL ONE BANK (USA) N.A. (“Defendant”) is a
28 nationwide banking institution, and is a “person” as defined by 47 U.S.C. § 153

1 (39).

2 6. The above named Defendant, and its subsidiaries and agents, are
3 collectively referred to as “Defendants.” The true names and capacities of the
4 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
5 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
6 names. Each of the Defendants designated herein as a DOE is legally responsible
7 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
8 Complaint to reflect the true names and capacities of the DOE Defendants when
9 such identities become known.

10 7. Plaintiff is informed and believes that at all relevant times, each and
11 every Defendant was acting as an agent and/or employee of each of the other
12 Defendants and was acting within the course and scope of said agency and/or
13 employment with the full knowledge and consent of each of the other Defendants.
14 Plaintiff is informed and believes that each of the acts and/or omissions complained
15 of herein was made known to, and ratified by, each of the other Defendants.

16 **FACTUAL ALLEGATIONS**

17 8. Beginning in or around November 2015, Defendant contacted
18 Plaintiff on Plaintiff’s home telephone number ending in -5544, in an attempt to
19 solicit Plaintiff to purchase Defendant’s services.

20 9. Plaintiff’s home telephone number ending in -5544 was added to the
21 National Do-Not-Call Registry on or about July 2, 2003.

22 10. Defendant contacted or attempted to contact Plaintiff from telephone
23 numbers including and not necessarily limited to (844) 313-6826.

24 11. Defendant’s calls constituted calls that were not for emergency
25 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

26 12. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
27 64.1200(c)(2), as they were an attempt to promote or sell Defendant’s services.

28 13. Plaintiff has received numerous solicitation calls from Defendant

1 within a 12-month period.

2 14. Plaintiff did not have an established business relationship with
3 Defendant during the time of the solicitation calls from Defendant.

4 15. Plaintiff did not give Defendant prior express written consent for
5 Defendant to call Plaintiff's home telephone for marketing or solicitation purposes.
6 Indeed, during one phone call, Plaintiff asked where Defendant had obtained his
7 phone number, and one of Defendant's agents stated that they obtained Plaintiff's
8 phone number from a third party company, namely "Lending Tree," with which
9 Plaintiff had no business relationship and thereby lacked consent to give out
10 Plaintiff's phone number.

11 16. Plaintiff requested for Defendant to stop calling Plaintiff during one
12 of the initial calls from Defendant, thus revoking any prior express consent that had
13 existed and terminating any established business relationship that had existed, as
14 defined under 16 C.F.R. 310.4(b)(iii)(B).

15 17. Plaintiff's request for Defendant to stop calling Plaintiff terminated
16 any established business relationship that may have existed between Plaintiff and
17 Defendant pursuant to 47 CFR § 64.1200(f)(5)(i).

18 18. Despite this, Defendant continued to call Plaintiff in an attempt to
19 solicit its services and in violation of the National Do-Not-Call provisions of the
20 TCPA thus repeatedly violating Plaintiff's privacy.

21 19. Upon information and belief, at all relevant times, Defendant failed to
22 establish and implement reasonable practices and procedures to effectively prevent
23 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §
24 227(c)(5).

25 **CLASS ALLEGATIONS**

26 20. The class concerning the National Do-Not-Call violation (hereafter
27 "The DNC Class") is defined as follows:

28 All persons within the United States registered on the National

1 Do-Not-Call Registry for at least 30 days, who had not granted
2 Defendant prior express consent nor had a prior established
3 business relationship, who received more than one call made by
4 or on behalf of Defendant that promoted Defendant's products
5 or services, within any twelve-month period, within four years
6 prior to the filing of the complaint.

7 21. The class concerning the National Do-Not-Call violation following
8 revocation of consent and prior business relationship, to the extent they existed
9 (hereafter "The DNC Revocation Class") is defined as follows:

10 All persons within the United States registered on the National
11 Do-Not-Call Registry for at least 30 days, who received more
12 than one call made by or on behalf of Defendant that promoted
13 Defendant's products or services, after having revoked consent
14 and any prior established business relationship, within any
15 twelve-month period, within four years prior to the filing of the
16 complaint.

17 22. Plaintiff represents, and is a member of, The DNC Class, consisting
18 of all persons within the United States registered on the National Do-Not-Call
19 Registry for at least 30 days, who had not granted Defendant prior express consent
20 nor had a prior established business relationship, who received more than one call
21 made by or on behalf of Defendant that promoted Defendant's products or services,
22 within any twelve-month period, within four years prior to the filing of the
23 complaint.

24 23. Plaintiff represents, and is a member of, The DNC Revocation Class,
25 consisting of all persons within the United States registered on the National Do-
26 Not-Call Registry for at least 30 days, who received more than one call made by or
27 on behalf of Defendant that promoted Defendant's products or services, after
28 having revoked consent and any prior established business relationship, within any
twelve-month period, within four years prior to the filing of the complaint.

24. Defendant, its employees and agents are excluded from The Classes.

1 Plaintiff does not know the number of members in The Classes, but believes the
2 Classes members number in the thousands, if not more. Thus, this matter should
3 be certified as a Class Action to assist in the expeditious litigation of the matter.

4 25. The Classes are so numerous that the individual joinder of all of its
5 members is impractical. While the exact number and identities of The Classes
6 members are unknown to Plaintiff at this time and can only be ascertained through
7 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
8 The Classes includes thousands of members. Plaintiff alleges that The Classes
9 members may be ascertained by the records maintained by Defendant.

10 26. Plaintiff and members of The DNC Class and DNC Revocation Class
11 were harmed by the acts of Defendant in at least the following ways: Defendant
12 illegally contacted Plaintiff and DNC Class and DNC Revocation Class members
13 via their telephones for solicitation purposes, thereby invading the privacy of said
14 Plaintiff and the DNC Class and DNC Revocation Class members whose telephone
15 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
16 and DNC Revocation Class members were damaged thereby.

17 27. Common questions of fact and law exist as to all members of The
18 DNC Class which predominate over any questions affecting only individual
19 members of The DNC Class. These common legal and factual questions, which do
20 not vary between DNC Class members, and which may be determined without
21 reference to the individual circumstances of any DNC Class members, include, but
22 are not limited to, the following:

- 23 a. Whether, within the four years prior to the filing of this
24 Complaint, Defendant or its agents placed more than one
25 solicitation call to the members of the DNC Class whose
26 telephone numbers were on the National Do-Not-Call Registry
27 and who had not granted prior express consent to Defendant and
28 did not have an established business relationship with

1 Defendant;

- 2 b. Whether Defendant obtained prior express written consent to
3 place solicitation calls to Plaintiff or the DNC Class members'
4 telephones;
- 5 c. Whether Plaintiff and the DNC Class member were damaged
6 thereby, and the extent of damages for such violation; and
- 7 d. Whether Defendant and its agents should be enjoined from
8 engaging in such conduct in the future.

9 28. As a person that received numerous solicitation calls from Defendant
10 within a 12-month period, who had not granted Defendant prior express consent
11 and did not have an established business relationship with Defendant, Plaintiff is
12 asserting claims that are typical of the DNC Class.

13 29. Common questions of fact and law exist as to all members of The
14 DNC Class which predominate over any questions affecting only individual
15 members of The DNC Revocation Class. These common legal and factual
16 questions, which do not vary between DNC Revocation Class members, and which
17 may be determined without reference to the individual circumstances of any DNC
18 Revocation Class members, include, but are not limited to, the following:

- 19 a. Whether, within the four years prior to the filing of this
20 Complaint, Defendant or its agents placed more than one
21 solicitation call to the members of the DNC Class whose
22 telephone numbers were on the National Do-Not-Call Registry
23 and who had revoked any prior express consent and any
24 established business relationship with Defendant;
- 25 b. Whether Plaintiff and the DNC Class member were damaged
26 thereby, and the extent of damages for such violation; and
- 27 c. Whether Defendant and its agents should be enjoined from
28 engaging in such conduct in the future.

1 30. As a person that received numerous solicitation calls from Defendant
2 within a 12-month period, who, to the extent one existed, had revoked any prior
3 express consent and any established business relationship with Defendant, Plaintiff
4 is asserting claims that are typical of the DNC Revocation Class.

5 31. Plaintiff will fairly and adequately protect the interests of the members
6 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
7 class actions.

8 32. A class action is superior to other available methods of fair and
9 efficient adjudication of this controversy, since individual litigation of the claims
10 of all Classes members is impracticable. Even if every Classes member could
11 afford individual litigation, the court system could not. It would be unduly
12 burdensome to the courts in which individual litigation of numerous issues would
13 proceed. Individualized litigation would also present the potential for varying,
14 inconsistent, or contradictory judgments and would magnify the delay and expense
15 to all parties and to the court system resulting from multiple trials of the same
16 complex factual issues. By contrast, the conduct of this action as a class action
17 presents fewer management difficulties, conserves the resources of the parties and
18 of the court system, and protects the rights of each Classes member.

19 33. The prosecution of separate actions by individual Classes members
20 would create a risk of adjudications with respect to them that would, as a practical
21 matter, be dispositive of the interests of the other Classes members not parties to
22 such adjudications or that would substantially impair or impede the ability of such
23 non-party Class members to protect their interests.

24 34. Defendant has acted or refused to act in respects generally applicable
25 to The Classes, thereby making appropriate final and injunctive relief with regard
26 to the members of the Classes as a whole.

27 ///

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class and the DNC Revocation Class

35. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-34.

36. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

37. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

38. Plaintiff and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class and DNC Revocation Class

39. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-34.

40. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227 (c)(5)*.

41. As a result of Defendant's knowing and/or willful violations of *47*

1 *U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class members
2 are entitled an award of \$1,500.00 in statutory damages, for each and every
3 violation, pursuant to *47 U.S.C. § 227(c)(5)*.

4 42. Plaintiff and the DNC Class and DNC Revocation Class members are
5 also entitled to and seek injunctive relief prohibiting such conduct in the future.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

8 **FIRST CAUSE OF ACTION**

9 **Negligent Violations of the Telephone Consumer Protection Act**

10 **47 U.S.C. §227(c)**

- 11 • As a result of Defendant's negligent violations of *47 U.S.C.*
12 *§227(c)(5)*, Plaintiff and the DNC Class and DNC Revocation Class
13 members are entitled to and request \$500 in statutory damages, for
14 each and every violation, pursuant to *47 U.S.C. 227(c)(5)*.
15 • Any and all other relief that the Court deems just and proper.

16 **SECOND CAUSE OF ACTION**

17 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
18 **Act**

19 **47 U.S.C. §227(c)**

- 20 • As a result of Defendant's willful and/or knowing violations of *47*
21 *U.S.C. §227(c)(5)*, Plaintiff and the DNC Class and DNC Revocation
22 Class members are entitled to and request treble damages, as provided
23 by statute, up to \$1,500, for each and every violation, pursuant to *47*
24 *U.S.C. §227(c)(5)*.
25 • Any and all other relief that the Court deems just and proper.

26 43. Pursuant to the Seventh Amendment to the Constitution of the United
27 States of America, Plaintiff is entitled to, and demands, a trial by jury.
28

1 Respectfully Submitted this 14th Day of February, 2017.

2 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

3
4 By: /s/ Todd M. Friedman

5 Todd M. Friedman

6 Law Offices of Todd M. Friedman

7 Attorney for Plaintiff